

<b>JEFFREY WELLS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>STANION WHOLESALE ELECTRIC</b>	)	Docket No. 234,026
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

At the outset of the preliminary hearing, the Court announced that the parties agreed to an IME with Dr. Stein if the Court determined the case to be compensable. After the hearing, the ALJ entered an Order for an independent medical examination by Dr. Stein. The Order by the ALJ asked Dr. Stein to determine whether claimant suffered

permanent impairment and, if so, the nature and extent of the impairment. The Order by the ALJ indicates that the Order is entered pursuant to K.S.A. 44-516.

Respondent's appeal addresses only the question of whether claimant suffered accidental injury arising out of and in the course of employment. While not stating an express finding, the Order by the ALJ, in context, impliedly finds that claimant did suffer accidental injury arising out of and in the course of employment. After reviewing the record, the Appeals Board agrees that conclusion should be affirmed.

Claimant testified to the accident as described above. Respondent produced evidence that the bar in question is normally kept on the opposite side of the machine. Respondent also disputed claimant's assertion that the machine may have jumped as much as a couple of feet. Respondent's witness testified that he operated the machine and it had, in fact, bucked as claimant described, but not as far. Respondent also produced other evidence, including a video, which generally suggests that it would be unusual for the accident to have occurred as claimant described. Claimant testified the video shows the machine operating at a much slower rate than when the accident occurred. The ALJ heard the testimony of claimant and concluded that the accident did occur. Giving deference to her evaluation of the credibility of the claimant, the Appeals Board finds that the Order by the ALJ should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on November 9, 1998, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1999.

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BOARD MEMBER

c: Steve Brooks, Liberal, KS  
Gregory D. Worth, Lenexa, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director